IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.230 of 2006
DIVISIONAL MANAGER ,ORIENTAL INSURANCE CO.LTD.
Versus
BINDA DEVI & BINDESHWARI DEVI
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5. 05.08.08. The order under challenge is dated 18th May, 2006, passed in M.A.C.T. Claim Case No. 72/04/21/04 by 4th Addl. Sessions Judge-cum-Presiding Officer, Claim Tribunal, Nawada, whereby and whereunder Presiding Officer of the Tribunal has disposed of the petition, filed on behalf of respondents Binda Devi and others under Section 140 of Motor Vehicle Act in respect of death of one Suresh Singh in a motor accident caused by Commander Jeep No. J.H.-09B/9699 which was alleged to have been driven at a high speed.

It has been submitted that the Jeep was being driven negligently and rashlessly. Suresh Singh was a cultivator whose yearly income was Rs. 60,000/- from cultivation and Rs. 3,000/- per month from sale of milk.

Heard learned counsel for the appellant- the Oriental Insurance Company Ltd. and learned counsel for the respondents-claimants.

Emphasis has been given on behalf of the appellant-Insurance Company that learned Claims Tribunal has directed the appellant to pay Rs. 50,000/- to the claimants under Section 140 of the Motor Vehicle Act, wherein the genuineness of the policy is doubted and the appellant has denied the insurance of the said vehicle.

It is further submitted that only the O.P. No.1 contested the claim case and filed written statement in which legal points of

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non- accrual of cause of action, non-maintainability of the case barred by principles of waiver, estoppel and acquiescence as well as defects of parties have been pleaded.

It has been further contended that there is nothing on the record to prove regarding age and occupation of the deceased. O.P. No.1 denied about the alleged accident. Further, it has been pleaded that the Insurance Company is not liable to indemnify the owner of the vehicle because the vehicle was not insured and the policy filed is forged.

It has also been submitted that the learned Presiding Officer of the Tribunal did not consider such objections raised on behalf of the appellant-applicant and decided the matter against them despite owner of the vehicle did not opt to adduce any evidence in support of his contention nor deny the Oriental Insurance Company's claim regarding forged insurance policy.

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Learned counsel for the claimants- respondents have also heard.

In the facts and circumstances, the impugned order is set aside and the record is sent back to the court below for passing a fresh order, taking into consideration objections raised on behalf of the appellant-Insurance Company and by securing appearance of the owner of the vehicle so as to enable the owner to raise some contention in support of genuineness regarding the policy of the Insurance Company, failing which adverse inference against the owner would be taken.

Rs. 25,000/- which has been deposited by the Insurance Company as statutory amount should be used for the purpose of payment to the claimants if the appellant Insurance Company is ultimately held responsible for payment.

Accordingly this appeal is allowed.

The court below is directed to decide the matter preferably within three months from the date of receipt/communication of a copy of this order.

M. Pal. **(Susbash Chandra Jha, J.)**

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